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Next 1 Page(s) In Document Exempt

Approved For Release 2003/08/20 : CIA-RDP84-00933R000300240005-0

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GENERAL SERVICES ADMINISTRATION
WASHINGTON, D. C. 20405

October 9, 1975

FEDERAL PROPERTY MANAGEMENT REGULATIONS
TEMPORARY REGULATION E-43

TO : Heads of Federal agencies

SUBJECT: Protection of privacy and data security

1. Purpose. This temporary regulation sets forth rules and procedures relevant to protection of privacy and data security in accordance with the Privacy Act of 1974.
2. Effective date. This regulation is effective September 27, 1975.
3. Expiration date. This regulation expires March 31, 1976.
4. Background. The Privacy Act of 1974 sets forth certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies to abide by the provisions of the act. This regulation informs the agencies of GSA's privacy safeguards concerning ADP and telecommunications.
5. General. This regulation sets forth rules and procedures to be followed by agencies in making use of, or providing, interagency ADP services. This regulation applies to inter-agency, intra-agency, and commercial ADP service arrangements. This regulation also sets forth the procedures to be followed by agencies in preparing solicitation documents for procuring ADP equipment, software, and services and telecommunications facilities and services.
6. Applicability. The provisions of this regulation apply to all Federal agencies.
7. Definitions. For the purpose of this temporary regulation the following terms shall have the meaning set forth below:
 - a. The term "agency" means agency as defined in the Privacy Act of 1974.
 - b. The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

OL 5 5576

FPMR Temp. Reg. E-43

October 9, 1975

c. The term "maintain" includes maintain, collect, use, or disseminate.

d. The term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print, or a photograph. *way out !!*

e. The term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

f. The term "threats and hazards" means man-made or natural events, the occurrence of which may result in the loss, alteration, or unauthorized access to data.

g. The term "safeguards" means those procedures, methods, and devices which have as their specific function the prevention or mitigation of the effects of threats and hazards.

h. The term "rules of conduct" means those administrative procedures, methods of work, and standards of conduct which together define the manner in which persons involved in the design, development, operation, or maintenance of systems of records will maintain, collect, use, or disseminate such records.

i. The term "Government contractor" means any individual or other entity who contracts to operate by or on behalf of an agency a system of records to accomplish an agency function.

8. Security and privacy requirements.

a. The Privacy Act of 1974, 5 U.S.C. 552a, requires that each agency that maintains a system of records shall:

(1) Maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by Executive order of the President (5 U.S.C. 552a(e)(10)). Thus, protection of privacy is promoted by limiting the amount of information maintained.

October 9, 1975

(2) Establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this action, including rules and procedures adopted pursuant to this section and the penalties for noncompliance (5 U.S.C. 552a(e)(9)).

(3) Establish appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained (5 U.S.C. 552a(e)(10)). It should be noted that the development of appropriate safeguards will necessarily be tailored to the requirements of the system of records being maintained. In addition, the need to provide safeguards may be influenced by other considerations such as ensuring continuity of agency operations, protecting proprietary data, protecting national security information, and ensuring accuracy and reliability of information.

b. Agencies contemplating acquisition of ADP or telecommunications equipment or services must determine whether such acquisitions will involve maintaining a system of records defined by the act. If so, the requirements cited in paragraph 8a, above, must be met, and the rules and procedures set forth in this temporary regulation must be adhered to.

c. Definition of responsibilities for implementing the act are contained in the Office of Management and Budget (OMB) Circular No. A-108, dated July 1, 1975. Guidelines for implementing Section 3 of the act are contained in OMB's Privacy Act Guidelines dated July 1, 1975. The OMB guidelines are found in 40 FR 28948.

9. Interagency ADP services. Special considerations and responsibilities apply in those instances in which one agency (the user agency) obtains ADP services from another (the provider agency) in the course of maintaining or operating systems of records. Specifically, these instances include the ADP Sharing Program (41 CFR 101-32.203) and the Federal Data Processing Centers (FDPC) (41 CFR 101-32.8).

FPMR Temp. Reg. E- 43

October 9, 1975

10. User agency responsibilities. A user agency shall:

a. Determine its data confidentiality and security requirements before storing or processing systems of records at a provider agency's facility;

b. Include in its screening of ADP resources an examination of the ability of each resource to meet its data confidentiality and security requirements (Specifically, the adequacy of available technical, administrative, and physical safeguards to counter anticipated threats and hazards must be evaluated.);

c. Satisfy itself that the rules of conduct governing the activities of personnel of the provider agency are commensurate with its data confidentiality and security requirements;

d. Obtain services from only those provider agencies that fully meet the user agency's data confidentiality and security requirements;

e. Recognize that the records it stores or processes at the facility of a provider agency will be considered to be maintained by the user agency; and

f. Establish written rules governing the disclosure by a provider agency of records considered to be maintained by the user agency.

11. Provider agency responsibilities. A provider agency shall:

a. As specified in 8a, above, develop rules of conduct for personnel involved in design, development, operation, or maintenance of equipment, systems, or services used to store or process systems of records;

b. In accordance with 8a, above, undertake a continuing program of review of its operations to ensure that threats and hazards to data confidentiality and security are properly identified and that appropriate safeguards are implemented;

c. Make available rules of conduct and information on safeguards to user agencies;

October 9, 1975

FPMR Temp. Reg. E-43

d. Refrain from disclosing any records stored or processed for a user agency except to that agency or under written rules established and provided by that user agency; and

e. Make known to user agencies changes in its perception of threats and hazards to data confidentiality and security or any changes in the safeguards implemented to protect against those threats and hazards. User agencies may use information on such changes to reevaluate its usage of the provider agency's services.

12. Contractors' responsibilities. Subsequent to the effective date of the act, all persons, including contractors, who are involved in the design, development, operation, or maintenance of any system of records, or the maintenance of any record, are subject to the applicable provisions of the act, including the agency rules of conduct. In addition, pursuant to 5 U.S.C. 552a(m), Government contractors, as defined in Section 7(i), above, and their employees are also subject to the criminal sanctions of 5 U.S.C. 552a(i).

13. Solicitation documents.

a. Agencies authorized to procure ADP equipment, software, or services in accordance with 41 CFR 101-32 or to procure telecommunications equipment or services in accordance with 41 CFR 101-35 shall include in their solicitation documents:

(1) Agency rules of conduct which a contractor and his employees shall be required to adhere to;

(2) A list of the anticipated threats and hazards which are pertinent to the contemplated procurement and which the contractor must safeguard against;

(3) A description of the safeguards which the agency specifically requires the contractor to provide; and

(4) A notice that under 5 U.S.C. 552a(m) of the act Government contractors and any employees of such contractors are subject to the criminal penalties of 5 U.S.C. 552a(i).

b. Agencies shall also:

(1) Evaluate vendor proposals to determine the adequacy of the safeguards proposed in meeting the anticipated threats or hazards to the security and integrity of records;

FPMR Temp. Reg. E- 43

October 9, 1975

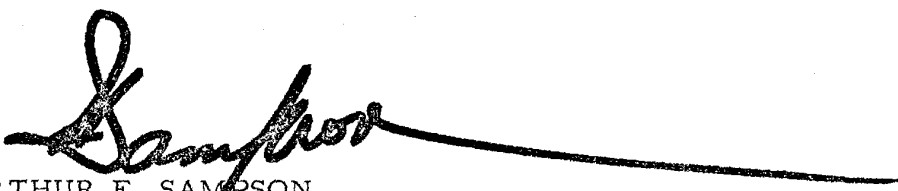
(2) Verify that any safeguards proposed by an offeror before award of a contract are in use and effective before commencing work under the contract;

(3) Identify in the specification and contract the test methods, procedures, and criteria to be used to verify that all safeguards have in fact been provided;

(4) Verify that any safeguards provided as a result of work done under the contract are effective; and

(5) Include in the system specifications and contract the requirements of the Government for a program of subsequent inspection that will be followed to ensure the continued efficacy and efficiency of safeguards and the discovery and countering of new threats and hazards.

14. Agency comments. Comments concerning the effect or impact of this regulation on agency operations or programs should be submitted to the General Services Administration (CP), Washington, DC 20405, no later than October 31, 1975.



ARTHUR F. SAMPSON
Administrator of General Services

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